

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD LEE, JR.,

Defendant-Appellant.

UNPUBLISHED

January 23, 2001

No. 221831

Jackson Circuit Court

LC No. 99-093395-FC

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant was convicted by a jury of carjacking, MCL 750.529a; MSA 28.797(a), and third-degree fleeing and eluding a police officer, MCL 257.602a(3); MSA 9.2302(1)(3), for which he was sentenced to serve prison terms of ten to twenty years and two to five years, respectively. He appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his carjacking sentence is disproportionate pursuant to *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Because the offenses were committed after January 1, 1999, the mandatory statutory sentencing guidelines were applicable. MCL 769.34(1), (2); MSA 28.1097(34)(1), (2). Defendant's carjacking sentence is within the mandatory statutory guidelines range of 81 to 135 months and, therefore, our review is constrained by MCL 769.34(10); MSA 28.1097(3.4)(10). The statute provides in pertinent part:

If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence . . . [MCL 769.34(10); MSA 28.1097(3.4)(10).]

Here, because defendant alleges neither a scoring error nor the use of inaccurate information in determining his sentence, we must affirm. See *People v Leversee*, ___ Mich App ___; ___ NW2d ___ (Docket No. 220571, issued 11/21/2000), slip op at 6. We further note that the Michigan Sentencing Guidelines Manual (April 1999), Chapter VI(B), p 161, explains that § 34(10) “appears to implicitly overrule that part of *People v Milbourn*, ... which held that a

sentence within the judicial guidelines might nevertheless constitute a reversible abuse of sentencing discretion.”

Affirmed.

/s/ Jeffrey G. Collins

/s/ Martin M. Doctoroff

/s/ Helene N. White